

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHARON L. BUCK)	
Claimant)	
VS.)	
)	Docket No. 1,015,851
RUSH COUNTY NURSING HOME)	
Respondent)	
AND)	
)	
CONTINENTAL WESTERN INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the September 23, 2005, preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

In the September 23, 2005, Order, Judge Moore found he had previously authorized Dr. Griebing to perform a trial implant of a sacral nerve stimulator but the doctor also performed a permanent implant without being authorized. Accordingly, the Judge denied claimant's request for certain medical bills to be paid as authorized medical treatment. Nonetheless, the Judge wrote in the Order that the issue would be revisited at the time of regular hearing.

Claimant contends Judge Moore erred. Claimant argues Dr. Griebing's medical treatment is directly related to the work-related injury she sustained while working for respondent and that implanting the sacral nerve stimulator "is a two part procedure and must be done in conjunction with each other."¹ Accordingly, claimant requests the Board to reverse the September 23, 2005, Order and to order her outstanding medical bills paid.

Conversely, respondent and its insurance carrier argue the Board does not have the jurisdiction to review the issue of whether certain medical treatment is authorized or

¹ Claimant's Brief at 2 (filed Oct. 6, 2005).

unauthorized at this stage of the claim. Consequently, respondent and its insurance carrier request the Board to dismiss this appeal.

The only issues before the Board on this appeal are:

1. Does the Board have the jurisdiction to review a preliminary hearing finding that certain medical treatment was not authorized and, therefore, the related bills should not be paid as authorized medical treatment?
2. If so, did the Judge err?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the parties' arguments, the Board finds and concludes it does not have jurisdiction at this juncture to review the Judge's preliminary hearing finding that certain medical treatment was not authorized. Consequently, claimant's appeal should be dismissed.

This is an appeal from a preliminary hearing order. Accordingly, the Board's jurisdiction is limited. The Board is expressly granted jurisdiction to review preliminary hearing findings that pertain to the following issues:

- I. Did the worker sustain an accidental injury?
- II. Did the injury arise out of and in the course of employment?
- III. Did the worker provide timely notice and timely written claim?
- IV. Did the employer establish any other defense that defeats the compensability of the claim?²

Also, the Board may review those preliminary hearing orders where the Judge has exceeded his or her jurisdiction or authority.³ But an administrative law judge has the authority at a preliminary hearing to determine whether certain medical treatment should be treated as either authorized or unauthorized.

² K.S.A. 44-534a.

³ K.S.A. 2004 Supp. 44-551.

In light of the above, the Board concludes it does not have the jurisdiction to review a preliminary hearing finding that medical treatment is unauthorized.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.⁴ Moreover, the Judge specifically stated he would revisit the issue when the claim proceeds to regular hearing.

WHEREFORE, the Board dismisses claimant's appeal.

IT IS SO ORDERED.

Dated this ____ day of December, 2005.

BOARD MEMBER

c: Tamara J. Collins, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ K.S.A. 44-534a(a)(2).